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October 13, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Dkt. No. 98-147 (Line Sharing)
Ex Parte Communication

Dear Ms. Salas:

This letter, on behalf of Network Access Solutions ("NAS"), responds to certain arguments that US West makes with regard to line sharing in its October 7, 1999 *ex parte* filing in this proceeding.

First, the Commission should not adopt US West's proposal to permit ILECs to price the "shared loop digital signal UNE" (*i.e.*, those frequencies on a shared loop on which DSL service is provided) in a discriminatory way. In its letter, US West asks that the FCC require a CLEC using a shared loop digital signal UNE to pay a price for that UNE equal to 50 percent of the full loop UNE price, while permitting an ILEC using a shared loop digital signal UNE to pay nothing for that UNE (*i.e.*, to attribute *no* loop costs to the ILEC's DSL service). Adopting US West's proposal would be unlawful under Section 251(c)(3) of the Act. That provision requires that UNEs be provided on terms that are nondiscriminatory. On its face, the pricing rule that US West proposes would be discriminatory by requiring a CLEC to pay a substantial sum for use of a facility for providing DSL service that US West, in its role as a competitor of the CLEC, would be permitted to use free of charge. Adoption of US West's proposed pricing policy also would violate the public interest even if it were not unlawful since it would prevent the development of competition in the residential DSL market by giving ILECs a huge cost advantage in marketing DSL service to residential customers. This cost advantage would amount to more than $7.00 per line per month on average (*i.e.*, 50% of the average price of a loop UNE). This is a substantial percentage of the total monthly cost to provide DSL service over a given line.

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Rather than adopt a policy that permits an ILEC to provide the shared loop digital signal UNE to CLECs at a higher price than it provides that UNE to itself, the FCC instead should require an ILEC to provide the UNE at the same price to both CLECs and itself. The Commission should permit an ILEC to set the price of that loop UNE at whatever amount the ILEC desires, subject only to the requirement that the ILEC attribute that same amount to its own DSL service as numerous commenters have recommended.

Second, the Commission should reject US West's proposal to permit an ILEC to provide data splitter functionality to CLECs for the provision of DSL service at a higher price than it provides that functionality to itself. In its letter, US West proposes to charge CLECs an amount for data splitter functionality that consists of a non-recurring charge of almost $90 per line plus an additional unspecified monthly recurring charge for rent, power use, HVAC use and racking, while exempting its own DSL service from bearing comparable data splitter costs. For the same reasons that US West's proposed pricing proposal for the shared loop digital signal UNE is both unlawful under Section 251(c)(3) and contrary to the public interest, its proposal to permit an ILEC to provide data splitter functionality at discriminatory prices likewise would be both unlawful and contrary to the public interest.

Rather than adopt a policy that permits an ILEC to provide data splitter functionality to CLECs at a higher price than the ILEC provides that functionality to itself, the FCC instead should require an ILEC to provide that functionality to CLECs and to itself at the same price. The agency should implement this non-discrimination policy in the manner that NAS proposed in its October 8, 1999, *ex parte* letter in this proceeding.

Third, the Commission should reject US West's proposal to delay the onset of mandatory line sharing until after T1E1 finalizes the existing line sharing technical standard sometime in the middle of next year. Permitting an ILEC to share a loop only with itself until the existing T1E1 standard becomes final not only would be patently discriminatory, it also would be contrary to the public interest by permitting the ILEC to further entrench its monopoly in the residential DSL market.

Fourth, the Commission should not delay the start of mandatory line sharing until a technical test of line sharing is conducted as US West recommends. Under the US West proposal, the FCC would delay the onset of line sharing until after ILECs determine in a series of tests that a wide variety of DSL technologies would not cause interference to existing ILEC services. But there is no need to conduct such testing if the Commission limits the DSL technologies that can be transmitted over a shared line to those that the ILEC itself uses over a shared line and those, such as ADSL, for which a technical standard governing use over a shared line already have been developed, as numerous commenters have suggested.

Finally, the Commission should reject US West's last ditch effort to replace line sharing with a heretofore undiscussed plan that US West refers to in its October 7 letter as "virtual line sharing." Even if virtual line sharing allowed a CLEC to compete with an ILEC's DSL offering on *price*, it still would not give the CLEC a fair opportunity to compete since it would require the CLEC to sell exchange service to a given customer as a condition precedent to the sale of DSL service to that customer. The record in this proceeding makes clear that a CLEC cannot compete effectively with ILECs in the residential DSL market if the CLEC must sell a given customer exchange service as a condition precedent to selling that customer the CLEC's DSL service.

Respectfully submitted,

Rodney L. Joyce
Counsel for Network Access Solutions Corp.

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